THE CASE OF THE CREDITORS, OF

Joſeph, and Nathaniel Hornby,

In Relation to the Bill of Mrs. *Katherine Fitz Gerald Villers*, Widdow of *Edward Fitz Gerald Villers* Deceaſed.

THE great Queſtion with Relation to the ſaid Creditors is, whither there ever was any ſuch Deed of Settlement Executed as is recited in the Mortgage, for 2000 *l.* made in *May* 86 by the ſaid *Edward* to Sr. *Theophilus Oglethorpe* in which it is recited, that the ſaid *Edward* had Power to grant or Mortagage the Lands in the Bill for raiſing any Summ, not exceeding 12000 *l.* for payment of the Debts, or Portions for his Younger Children: Now the Reaſons that induce the Creditors to believe there was a Deed Executed with ſuch Power is, for that the Mortgage was made within three Months after the Deed of Settlement, and the Draught of a Settlement was produced to Counſel, which was affirm'd to agree with the Deed; and therein there was ſuch a Power as is recited in the Mortgage to Sr. *Theophilus* and Mr. *Edward Villers*, the Mortgager was eſteemed a Gentleman of that Worth and Honour, that he would not have offered it as a ſecurity, in caſe he had no ſuch Power.

Now admitting the Caſe to be otherwiſe, and that Mr. *Edward Villers* was miſtaken, and had no ſuch Power as is recited in the Mortgage, and that the Power he had was only what is given him by a Deed of the 24th of *February* 1685 which was produced to the Committee on *Saturday* laſt, whereby he had liberty by his laſt Will, or any other Writing by him to be perfected, to grant or convey the Eſtate for raiſing 12000 *l.* for the better proviſion for his ſaid Wife, or Portions for his Younger Children: Then the Queſtion will be how far this Mortgage may be made good in a Court of Equity, conſidering the ſeveral circumſtances that attend the Caſe: For firſt, if Mr. *Edward Villers* had Mortgaged the Eſtate for any Summ for the Maintenance of his Wife, that Money, when raiſed, had been in his own diſpoſal, there being no proviſion to the contrary, in the Deed produced to the Committee.

Secondly, in that very produced Deed, Mr. *Villers* had power to grant Leaſes for Three Lives, or 41 Years, reſerving a Moiety of Rents uſually paid; Now this was giving ſuch a Power over the Eſtate, as might have Enabled him to Raiſe a much greater Summ, by letting Leaſes at one Halfe of the Rents, and if the Mortgage to Sir *Theophilus*, had been by Leaſe of the whole Eſtate, reſerving but a Moiety of the Rent, it had been a good Security, and he might have enjoyed the Eſtate ſubject to the proviſoe, perſuant to the Power in ſuch produced Settlement.

But beſides all this, Mr. *Villers* by his Will, in which he Chargeth the Eſtate with 12000 *l.* gives 2000 *l.* thereof to his Wife, beſides ſuch of the Childrens Portions as ſhould Die before they became Payable: Now certainly this 2000 *l.* ought to be Accounted as part of his Perſonal Eſtate, to pay a Creditor, where there is no other Aſſetts.

Now, if the Creditors of *Hornby* can (as they are Adviſed they may) be Releived in a Court of *Equity* upon this Mortgage, which is ſince legally Aſſigned, and Conveyed to Truſtees for their Benifit, *'Its humbly hoped this Honourable Houſe, in caſe they Paſs this Bill, will make proviſion for their Receiving the ſaid Debt.*

Note, The Creditors of *Hornby*, were never heard upon the matter, when the Bill was before the Lords, or had any Notice thereof, till the ſame was in the Printed *Votes*.